

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD  
WESTERN WASHINGTON REGION  
STATE OF WASHINGTON

WV WELLS TESTAMENTARY TRUST AND  
MARILYN WELLS DERIG,

Petitioners,

v.

CITY OF ANACORTES,

Respondent.

Case No. 13-2-0017

**ORDER OF DISMISSAL**

This matter is before the Board pursuant to a motion filed by the City of Anacortes (City) seeking dismissal based on a lack of jurisdiction.<sup>1</sup> The Petitioners filed a response<sup>2</sup> to which the City replied.<sup>3</sup> The Petitioners subsequently filed a motion requesting that the Board strike certain portions of the City's reply brief.<sup>4</sup> That then led to yet another response from the City.<sup>5</sup> Neither of the last two referenced pleadings will be considered and will be stricken from the record.<sup>6</sup>

The Petitioners have raised a single issue in this matter:

Whether, in Ordinance 2901, incorporation by reference into the Comprehensive Plan of the "City of Anacortes Shoreline Master program, 2010" complies with RCW 36.70A.070 (preamble) which requires that the Comprehensive Plan be an internally consistent document with all elements consistent with the future land use map.

<sup>1</sup> City of Anacortes's Motion to Dismiss for Lack of Jurisdiction, filed on June 10, 2013.

<sup>2</sup> Wells' Opposition to City Motion to Dismiss for Lack of Jurisdiction and Wells' Request for Official Notice, filed June 20, 2013.

<sup>3</sup> City of Anacortes's Reply Brief in Support of Motion to Dismiss for Lack of Jurisdiction, filed June 24, 2013. Included in the Petitioners' response was a request for the Board to take official notice of the City of Anacortes 2000 Shoreline Master plan and of pp. 1-15 of the 1997 Skagit County Comprehensive Plan. The City did not object to official notice (City Reply at 4). The Board takes official notice of those documents pursuant to WAC 242-03-630.

<sup>4</sup> Wells' Motion to Strike New Claims in City of Anacortes Reply Brief, filed June 25, 2013.

<sup>5</sup> City of Anacortes's Response to Motion to Strike, filed June 28, 2013.

<sup>6</sup> WAC 242-03-550 and WAC 242-03-555.

1 RCW 36.70A.070 (preamble) provides as follows:

2 The comprehensive plan of a county or city that is required or chooses to  
3 plan under RCW 36.70A.040 shall consist of a map or maps, and descriptive  
4 text covering objectives, principles, and standards used to develop the  
5 comprehensive plan. **The plan shall be an internally consistent document**  
6 **and all elements shall be consistent with the future land use map.** A  
7 comprehensive plan shall be adopted and amended with public participation  
8 as provided in RCW 36.70A.140. (emphasis added)

9 Thus it is Petitioners' allegation the City's adoption of Ordinance 2901 resulted in an  
10 internally inconsistent comprehensive plan document.

11 The City completed its RCW 36.70A.130 Comprehensive Plan update in 2007. That  
12 document included the following:

13 This Comprehensive Plan is designed to provide general policy guidance for  
14 the growth and development of the City of Anacortes. It incorporates by this  
15 reference into this Comprehensive Plan: ... the City of Anacortes Shoreline  
16 Master Plan, 2000 . . .<sup>7</sup>

17 In order to further this and other Goals of the City Comprehensive Plan, the  
18 following plans/studies are hereby adopted and incorporated by reference  
19 into this Comprehensive Plan: ... the City of Anacortes Shoreline Master  
20 Plan, 2000 . . . .<sup>8</sup>

21 Thereafter, the City amended its Shoreline Master Program with that program update  
22 having been finally approved by the Department of Ecology in 2010.<sup>9</sup> The Petitioners do not  
23 dispute the City's assertion Petitioners failed to file an appeal of the final SMP approval.

24 The City action giving rise to the challenge now before the Board was its adoption of  
25 Ordinance 2901 on January 22, 2013. That ordinance amended the City's 2007  
26 Comprehensive Plan in the following regards (the underlined portions indicate the amended  
27 language):  
28  
29  
30

31 <sup>7</sup> Anacortes Comprehensive Plan, p. 2.

32 <sup>8</sup> Anacortes Comprehensive Plan, p. 10.

<sup>9</sup> Department of Ecology correspondence of September 22, 2010 attached at tab 8 to the City's motion. Any appeal would have necessarily been filed within 60 days of September 22, 2010 or within 60 days of publication of the notice of final action.

1 This Comprehensive Plan is designed to provide general policy guidance for  
2 the growth and development of the City of Anacortes. It incorporates by this  
3 reference into this Comprehensive Plan: ... the City of Anacortes Shoreline  
4 Master Program, 2010 . . .<sup>10</sup>

5 In order to further this and other Goals of the City Comprehensive Plan, the  
6 following plans/studies are hereby adopted and incorporated by reference  
7 into this Comprehensive Plan: ... the City of Anacortes Shoreline Master  
8 Program, 2010 . . . .<sup>11</sup>

9 The City argues any comprehensive plan inconsistencies that might exist arose in  
10 2010 with final approval of the SMP update. The City's adoption of Ordinance 2901 merely  
11 amended the shoreline management program's title. It observes RCW 36.70A.480  
12 automatically incorporates the goals and policies of a shoreline management program into a  
13 jurisdiction's comprehensive plan. All remaining portions of a shoreline master program are  
14 then incorporated into the jurisdictions development regulations.<sup>12</sup>

15 The Petitioners' argument appears to primarily rest upon an assertion the 2010 SMP  
16 did not clearly and completely delineate its "goals and policies" as those words are used in  
17 RCW 36.70A.480(1). The Petitioners' brief states:

18  
19 The 2010 SMP identifies its goals and policies in: Chapter 4 (Master Program  
20 Elements: Goals & Associated Policies and Regulations); Chapter 5  
21 (Shoreline Environment & Associated Policies and Regulations); Chapter 6  
22 (Environmental Protection General Regulations); Chapter 7 (Shoreline Public  
23 Access); Chapter 8 (Specific Use Policies and Development Regulations);  
24 Chapter 9 (Specific Shoreline Modifications Policies and Development  
25 Regulations); and Appendix B (Shoreline Restoration Plan). Only these  
26 identified goals and policies with section numbers and page numbers  
27 referenced in footnotes 6-12 [of Petitioners' response brief] were  
28 incorporated into the City Comprehensive Plan by Ecology's final approval of  
29 the 2010 SMP.<sup>13</sup> (emphasis added-not included in original)

30 <sup>10</sup> Ordinance 2901, at p. 2 of 4

31 <sup>11</sup> Ordinance 2901, at p. 3 of 4

32 <sup>12</sup> RCW 36.70A.480 (1) For shorelines of the state, the goals and policies of the shoreline management act as set forth in RCW 90.58.020 are added as one of the goals of this chapter as set forth in RCW 36.70A.020 without creating an order of priority among the fourteen goals. The goals and policies of a shoreline master program for a county or city approved under chapter 90.58 RCW shall be considered an element of the county or city's comprehensive plan. All other portions of the shoreline master program for a county or city adopted under chapter 90.58 RCW, including use regulations, shall be considered a part of the county or city's development regulations. (emphasis added)

<sup>13</sup> Wells' Opposition to City Motion to Dismiss at 5, 6.

1 In other words, if the City did not identify portions of its SMP as “goals and policies,”  
2 then they were not incorporated into the comprehensive plan as a result of the approval of  
3 the SMP by DOE. Petitioners state there are other goals and policies which are not included  
4 in the above referenced chapters and, consequently, they were not incorporated in 2010.  
5 The Petitioners then suggest those unidentified or non-referenced “goals and policies” were  
6 finally incorporated into the City’s Comprehensive Plan by adoption of Ordinance 2901. That  
7 fact, they assert, then grants Petitioners the right to raise their current challenge.  
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9 Whether or not the City specifically identified the goals and policies of its Shoreline  
10 Management Program as such is of no consequence. RCW 36.70A.480(1) is clear that the  
11 goals and policies of a jurisdiction’s SMP are considered an element of a comprehensive  
12 plan: “The goals and policies of a shoreline master program . . . shall be considered an  
13 element of the county or city's comprehensive plan . . . .” The statute does not state that  
14 goals and policies identified as such shall be considered an element of the County’s  
15 comprehensive plan.  
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17 The Petitioners’ appeal is time barred. The underlying basis for a consistency  
18 challenge under RCW 36.70A.070 (preamble) arose at the time the City’s Shoreline  
19 Management Program was finally approved by the Department of Ecology in 2010. In order  
20 to invoke the jurisdiction of the Board, the Petitioners needed to file their Petition for Review  
21 pursuant to RCW 90.58.190 and RCW 36.70A.290, more than two years ago.  
22

23 To accept Petitioners’ argument would be to raise an issue of form over substance.  
24 Ordinance 2901 merely amended the City’s Comprehensive Plan to correct the title of the  
25 City’s shoreline management program.

26 Petitioners have failed to invoke the jurisdiction of the Board and their Petition for  
27 Review should be dismissed.  
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### 29 ORDER

30 Based on the foregoing, Case No. 13-2-0017, *WV Wells Testamentary Trust and*  
31 *Marilyn Wells Derig v. City of Anacortes* is DISMISSED.  
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1 DATED this 5th day of July, 2013.

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William Roehl, Presiding Officer

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Nina Carter, Board Member

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Charles Mosher, Board Member

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12 Note: This is a final decision and order of the Growth Management Hearings Board issued  
13 pursuant to RCW 36.70A.300.<sup>14</sup>  
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31 <sup>14</sup> Should you choose to do so, a motion for reconsideration must be filed with the Board and served on all  
32 parties within ten days of mailing of the final order. WAC 242-03-830(1), -840.  
A party aggrieved by a final decision of the Board may appeal the decision to Superior Court within thirty days  
as provided in RCW 34.05.514 or 36.01.050. See RCW 36.70A.300(5) and WAC 242-03-970.  
It is incumbent upon the parties to review all applicable statutes and rules. The staff of the Growth  
Management Hearings Board is not authorized to provide legal advice.